

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

KENNETH RAY GOLDSMITH

PLAINTIFF

VS.

CIVIL ACTION NO. 3:08cv638-TSL-FKB

MARK SHEPARD, ET AL.

DEFENDANTS

**REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

This cause comes on this date on the *sua sponte* motion of the Court to dismiss this cause of action because of Plaintiff's failure to prosecute his claims. Natural Gas Pipeline Co. v. Energy Gathering, Inc., 2 F.3d 1397, 1407 (5th Cir. 1993). Plaintiff failed to attend the Omnibus Hearing held in this matter on March 31, 2010. The docket sheet does not indicate that the Order setting the hearing was returned to the Court by the U.S. Postal Service. In addition, an order entered by Judge Lee on and sent to the Plaintiff at the address he provided to the Court has been returned to the Court by the U.S. Postal Service marked, "not deliverable." (Document Number 21, 3/31/10.) In its orders, this Court has warned plaintiff that he should keep the Court informed of his current address. Furthermore, the Plaintiff has failed to respond to the Show Cause Order entered by the Court on April 5, 2010. (Document number 22.) By failing to attend the Omnibus Hearing on March 31, 2010, by failing to keep the Court informed of his current address, and by failing to respond to the Show Cause Order, the Plaintiff has failed to prosecute this case. For these reasons, the undersigned recommends that Plaintiff's claims be dismissed without prejudice for failure to prosecute. Fed. R. Civ. P. 41(b).

The parties are hereby notified that failure to file written objections to the proposed findings, conclusions, and recommendation contained within this report and recommendation

within fourteen (14) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. 28 U.S.C. § 636, Douglass v. United Services Automobile Association, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

RESPECTFULLY SUBMITTED, this the 27th day of April, 2010.

/s/ F. Keith Ball
UNITED STATES MAGISTRATE JUDGE